

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA, <div style="text-align: center;">Plaintiff,</div> <div style="text-align: center;">vs.</div> LETICIA BARRIENTOS, <div style="text-align: center;">Defendant.</div>))))))))))	CASE NO. 8:06CR19 <div style="text-align: center;">AMENDED TENTATIVE FINDINGS</div>
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The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 137). The government has adopted the PSR. (Filing No. 130.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the following portions of the PSR:

1. ¶¶ 16, 24 (government’s version of the offense) - the Court is not at liberty to change the government’s version of the offense. The objection is denied.

2. ¶¶ 26, 33 and 66 (gun enhancement pursuant to U.S.S.G. § 2D1.1(b)(1) - the plea agreement is silent as to this issue. The objection will be heard at sentencing. The government bears the burden of proof by a preponderance of the evidence.

Also, the Defendant requests a downward departure. The motion will be heard at sentencing.

Additionally, these Amended Tentative Findings are issued in light of the apparent error noted on page 8 of the PSR and affected paragraphs. The PSR states that the total

offense level is 27; however, it appears that the total offense level is 28. Therefore, it appears that ¶¶ 39, 41 and 66 should be changed to reflect a total offense level of 28, and ¶ 66 should be changed to reflect a guideline range of 78-97 months before the application of U.S.S.G. § 5G1.1(b).

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 137) are denied as to ¶¶ 16 and 24 (government's version of the offense), and the objections to ¶¶ 26, 33 and 66 (gun enhancement) will be heard at sentencing;

2. The Defendant's motion for downward departure (Filing No. 137) will be heard at sentencing;

3. Paragraphs 39, 41 and 66 should be changed to reflect a total offense level of 28, and ¶ 66 should be changed to reflect a guideline range of 78-97 months before the application of U.S.S.G. § 5G1.1(b);

4. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

5. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

6. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

7. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 12th day of October, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge